

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN ASSEMBLY MAY 1, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 2529**

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**Introduced by Assembly Members Wieckowski and Beall**

February 24, 2012

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An act to amend Sections 116760.43, 116760.50, 116761.20, 116761.21, 116761.23, 116761.50, 116761.65, and 116761.70 of the Health and Safety Code, relating to safe drinking water.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2529, as amended, Wieckowski. Safe Drinking ~~Water~~: *Water State Revolving Fund*.

Existing law, the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health. The department's duties include, but are not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adopting and enforcing regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.

Existing law establishes the Safe Drinking Water State Revolving Fund, which is continuously appropriated to the department for the provision of grants and revolving fund loans to provide for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. Existing law authorizes

the department to establish specified separate accounts or subaccounts within the fund.

Existing law requires applicants for loans or grants to provide specified information to the department. Existing law authorizes the department to enter into contracts with applicants for grants or loans, and requires and authorizes these contracts to contain specified information.

~~This bill would authorize the department to adopt interim regulations for purposes of implementing provisions relating to the Safe Drinking Water State Revolving Fund. The bill would require an applicant for funding to demonstrate that it has the technical, managerial, and financial capacity to operate and maintain its water system for at least 20 years, as specified. The bill would authorize an applicant, subject to specified conditions, to receive up to the full cost of a *construction* project in the form of a loan. The bill would require that contracts entered into between the department and an applicant include certain additional information, and authorize the contracts to include certain additional information.~~

This bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 116760.43 of the Health and Safety Code
- 2 is amended to read:
- 3 116760.43. (a) The department may adopt emergency
- 4 regulations pursuant to Chapter 3.5 (commencing with Section
- 5 11340) of Part 1 of Division 3 of Title 2 of the Government Code
- 6 necessary or convenient to implement this chapter and to meet
- 7 requirements pursuant to the federal act.
- 8 (b) The adoption of any emergency regulations that are filed
- 9 with the Office of Administrative Law within 18 months of the
- 10 effective date of this act shall be deemed to be an emergency and
- 11 necessary for the immediate preservation of the public peace, health
- 12 and safety, or general welfare.
- 13 ~~(c) In addition to the authority granted pursuant to subdivision~~
- 14 ~~(a), the department may adopt interim regulations to implement~~
- 15 ~~this chapter and to meet the requirements of the federal act and its~~
- 16 ~~implementing regulations or guidelines. The interim regulations~~
- 17 ~~shall not be subject to the rulemaking provisions of Chapter 3.5~~

1 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~  
2 ~~2 of the Government Code, and:~~

3 ~~(1) Shall be subject to a public review and comment period of~~  
4 ~~not less than 30 days.~~

5 ~~(2) Shall take effect when filed with the Secretary of State, and~~  
6 ~~shall be published in the California Code of Regulations.~~

7 ~~(3) Shall remain in effect for three years, unless sooner repealed~~  
8 ~~or amended by additional regulations adopted pursuant to this~~  
9 ~~subdivision.~~

10 ~~(4) May amend or repeal emergency regulations adopted~~  
11 ~~pursuant to subdivision (a).~~

12 ~~(5) Shall supersede any conflicting emergency regulations~~  
13 ~~adopted pursuant to subdivision (a).~~

14 ~~(d)~~

15 *(c)* Applicable regulations in effect at the time a complete  
16 application for funding a *planning and preliminary design* project  
17 pursuant to this chapter is received by the department shall apply  
18 to the *planning and preliminary design project or construction*  
19 project funding, unless the department determines a regulation  
20 adopted later, but prior to the date a funding agreement is issued  
21 for a *planning and a preliminary design project or a construction*  
22 project, would be more beneficial to the project applicant, in which  
23 case the later adopted regulation may be applied.

24 SEC. 2. Section 116760.50 of the Health and Safety Code is  
25 amended to read:

26 116760.50. The department shall establish criteria that shall  
27 be met for projects to be eligible for consideration for funding  
28 under this chapter. The criteria shall include all of the following:

29 ~~(a) Except as provided in subdivision (d), all~~ *All* preliminary  
30 design work for a defined project that will enable the applicant to  
31 supply water that meets safe drinking water standards, including  
32 a cost estimate for the project, shall be completed.

33 *(b)* A legal entity shall exist that has the authority to enter into  
34 contracts and incur debt on behalf of the community to be served  
35 and owns the public water system or has the right to operate the  
36 public water system under a lease with a term of at least 20 years,  
37 unless otherwise authorized by the department. If the proposed  
38 project is funded by a loan under this chapter, the department may  
39 require the applicant to secure a lease for the full term of the loan  
40 if the loan exceeds 20 years.

1 (c) The applicant shall hold all necessary water rights.

2 (d) ~~(1)~~ The applicant shall have completed, prior to receiving  
3 a funding agreement, environmental review, and documentation  
4 of the defined project, including, but not limited to, any review  
5 required pursuant to the California Environmental Quality Act  
6 (Division 13 (commencing with Section 21000) of the Public  
7 Resources Code) and the guidelines adopted pursuant thereto. Any  
8 measures required for compliance with applicable environmental  
9 laws and regulations shall be included in the final plans for the  
10 defined project.

11 ~~(2) Notwithstanding paragraph (1), a defined project may be~~  
12 ~~subject to further or supplemental review consistent with the~~  
13 ~~requirements of any applicable environmental laws or regulations.~~

14 (e) The applicant has assembled sufficient financial data to  
15 establish its ability to complete the proposed project and to  
16 establish the amount of debt financing it can undertake.

17 (f) The applicant shall demonstrate that it has the technical,  
18 managerial, and financial capacity to operate and maintain its water  
19 system, including the *construction* project, in accordance with  
20 *Section 300j-12(a)(3)* of the federal act, state law, and applicable  
21 regulations for at least 20 years, or shall submit an acceptable plan  
22 for achieving this capacity by the time the project is scheduled to  
23 be completed.

24 SEC. 3. Section 116761.20 of the Health and Safety Code is  
25 amended to read:

26 116761.20. (a) Planning and preliminary engineering studies,  
27 project design, and construction costs incurred by community and  
28 not-for-profit noncommunity public water systems may be funded  
29 under this chapter by loans, and, if these systems are owned by  
30 public agencies or private not-for-profit water companies, by  
31 grants, or a combination of grants and loans.

32 (b) (1) The department shall determine what portion of the full  
33 costs the public agency or private not-for-profit water company is  
34 capable of repaying and authorize funding in the form of a loan  
35 for that amount. The department shall authorize a grant only to the  
36 extent the department finds the public agency or not-for-profit  
37 water company is unable to repay the full costs of a loan.

38 (2) Notwithstanding any other provision of this chapter, a small  
39 community water system or nontransient noncommunity water  
40 system that is owned by a public agency or a private not-for-profit

1 water company and serving a severely disadvantaged community,  
2 is deemed to have no ability to repay a loan.

3 (c) At the request of the department, the Public Utilities  
4 Commission shall submit comments concerning the ability of  
5 suppliers, subject to its jurisdiction, to finance the project from  
6 other sources and to repay the loan.

7 SEC. 4. Section 116761.21 of the Health and Safety Code is  
8 amended to read:

9 116761.21. Not more than 30 percent and not less than 15  
10 percent, provided that there are projects eligible for funding as  
11 prescribed in Section 116760.70, of the total amount of the  
12 capitalization grant may be expended for grants. This amount shall  
13 be limited to disadvantaged communities specified in Section  
14 1452(d) of the federal act (~~42 U.S.C.A.~~ *U.S.C. Sec. 300j-12*).

15 SEC. 5. Section 116761.23 of the Health and Safety Code is  
16 amended to read:

17 116761.23. (a) The maximum amount of a planning grant  
18 permitted under this chapter for each participating public water  
19 system's share of the costs of the planning, engineering studies,  
20 environmental documentation, and design of a single project shall  
21 be no more than five hundred thousand dollars (\$500,000).

22 (b) Unless the department approves an increase pursuant to this  
23 subdivision, the maximum amount of a construction grant award  
24 authorized under this chapter to each participating public water  
25 system for its share of the cost of the construction of a single  
26 project shall be no more than three million dollars (\$3,000,000).  
27 The department may approve an increase in the maximum amount  
28 for a construction grant award authorized under this chapter so  
29 that the maximum amount of the construction grant award does  
30 not exceed ten million dollars (\$10,000,000) only if the department  
31 makes all of the following findings:

32 (1) A public water system that serves a disadvantaged  
33 community has a defined project need that exceeds the maximum  
34 grant amount of three million dollars (\$3,000,000).

35 (2) The defined project has been bypassed in at least one funding  
36 cycle due to a lack of funds.

37 (3) The defined project is eligible for funding pursuant to the  
38 program regulations.

1 (4) The defined project represents the highest public health risk  
2 among unfunded projects, as determined by the department  
3 according to its standard criteria.

4 (c) Total funding under this article for planning, engineering  
5 studies, environmental documentation, project design, and  
6 construction costs of a single project, whether in the form of a loan  
7 or a grant, or both, shall be determined by an assessment of  
8 affordability using criteria established by the department.

9 (d) Subject to all other limitations of this chapter, a small  
10 community water system or nontransient noncommunity water  
11 system, owned by a public agency or private not-for-profit water  
12 company, serving severely disadvantaged communities shall be  
13 eligible to receive up to 100 percent of eligible project costs in the  
14 form of a grant, to the extent the system cannot afford a loan as  
15 determined by the department pursuant to Section 116761.20.

16 (e) Subject to the availability of funds and the applicant's ability  
17 to repay, an applicant may receive up to the full cost of the  
18 *construction* project in the form of a loan bearing interest at the  
19 rate established pursuant to subdivision (a) of Section 116761.65.

20 SEC. 6. Section 116761.50 of the Health and Safety Code is  
21 amended to read:

22 116761.50. (a) The department may enter into contracts with  
23 applicants for grants or loans for the purposes set forth in this  
24 chapter. Any contract entered into pursuant to this section shall  
25 include only terms and conditions consistent with this chapter and  
26 the regulations established under this chapter.

27 (b) The contract shall include all of the following terms and  
28 conditions that are applicable:

29 (1) An estimate of the reasonable cost of the project or study.

30 (2) An agreement by the department to loan or grant, or loan  
31 and grant, the applicant an amount that equals the portion of the  
32 costs found by the department to be eligible for a state loan or  
33 grant. The agreement may provide for disbursement of funds during  
34 the progress of the study or construction, or following completion  
35 of the study or construction, as agreed by the parties.

36 (3) An agreement by the applicant to proceed expeditiously with  
37 the project or study.

38 (4) An agreement by the applicant to commence operations of  
39 the project upon completion of the project, and to properly operate

1 and maintain the project in accordance with the applicable  
2 provisions of law.

3 (5) In the case of a loan, an agreement by the applicant to repay  
4 the state, over a period not to exceed the useful life of the project  
5 or 20 years, whichever is shorter, except as provided in the federal  
6 act, or in the case of a study, over a period not to exceed five years,  
7 that includes all of the following:

8 (A) The amount of the loan.

9 (B) The administrative fee specified in subdivision (a) of Section  
10 116761.70.

11 (C) Interest on the principal, which is the amount of the loan  
12 including, if applicable, an administrative fee.

13 (6) In the case of a grant, an agreement by the public agency or  
14 private not-for-profit water company to operate and maintain the  
15 water system for a period of 20 years, unless otherwise authorized  
16 by the department.

17 (7) (A) The time for the completion of the *planning and*  
18 *preliminary design* project. Subject to any requirements of the  
19 federal act and its implementing regulations and guidelines, in the  
20 case of a project for planning and a preliminary design, pursuant  
21 to Section 116760.80, *and except as specified in subparagraph*  
22 *(B), the department may determine on a case-by-case basis an*  
23 *appropriate amount of time for completion of the project, not to*  
24 *exceed 36 months* *funding recipient shall complete the project*  
25 *within 18 months from the date of the execution of the funding*  
26 *agreement.*

27 (B) *If the funding recipient cannot complete the project within*  
28 *18 months, the department may grant an extension of up to 18*  
29 *months upon request of the funding recipient.*

30 (c) The contract may include any of the following terms and  
31 conditions:

32 (1) An agreement by the ~~supplier~~ *funding recipient* to adopt a  
33 fee structure that provides for the proper maintenance and  
34 operations of the project and includes a sinking fund for repair and  
35 replacement of the facilities in cases where appropriate. The fee  
36 structure shall also provide an acceptable dedicated source of  
37 revenue for the repayment of the amount of the loan, and the  
38 payment of administrative fees and interest.

(2) If the entire project is not funded pursuant to this chapter, the department may include a provision requiring the applicant to share the cost of the project or obtain funding from other sources.

(3) An agreement by the ~~supplier~~ *funding recipient* to complete, as part of the *planning and preliminary design project or construction* project, a rate study pursuant to guidelines established by the department.

(4) An agreement by the ~~supplier~~ *funding recipient* to implement, not later than the conclusion of the *construction* project, the approved plan for achieving technical, managerial, and financial capacity as specified in subdivision (f) of Section 116760.50.

(5) If the ~~supplier~~ *funding recipient* is a small community water system or nontransient noncommunity water system, owned by a public agency or private not-for-profit water company; receiving grant funding, an agreement by the ~~supplier~~ *funding recipient* to ~~comply with~~ *review and consider* guidelines adopted by the department for any procurement of engineering, environmental compliance, or architectural services.

(d) The department may require applicants to provide security for loan contracts.

SEC. 7. Section 116761.65 of the Health and Safety Code is amended to read:

116761.65. (a) The department shall annually establish the interest rate for loans made pursuant to this chapter at 50 percent of the average interest rate, computed by the true interest cost method, paid by the state on general obligation bonds issued in the prior calendar year. All loans made pursuant to this chapter shall carry the interest rate established for the calendar year in which the funds are committed to the loan, as of the date of the issuance of the funding commitment. The interest rate set for each loan shall be applied throughout the repayment period of the loan. Interest on the loan shall not be deferred.

(b) Notwithstanding subdivision (a), if the loan applicant is a public water system that is a disadvantaged community or provides matching funds, the interest rate on the loan shall be ~~zero~~ 0 percent.

SEC. 8. Section 116761.70 of the Health and Safety Code is amended to read:

116761.70. (a) Not more than 4 percent of the capitalization grant may be used by the department for administering this chapter. The department may establish a reasonable schedule of



1 administrative fees for loans, which shall be paid by the funding  
2 recipient to reimburse the state for the costs of the state  
3 administration of this chapter. ~~The department annually shall~~  
4 ~~establish in the Intended Use Plan the amount of any administrative~~  
5 ~~fee.~~

6 (b) Charges incurred by the Attorney General in protection of  
7 the state's interest in the use of repayment of grant and loan funds  
8 under this chapter shall be paid. These charges shall not be paid  
9 from funds allocated for administrative purposes, but shall be  
10 treated as a program expense not to exceed one-half of 1 percent  
11 of the total amount deposited in the fund.

O